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August 5, 2019

Samuel Sinyangwe  
MuckRock News, DEPT MR 77187 411A  
Highland Ave.  
Somerville, MA 02144

Re: Public Information Request received July 15, 2019  
City of Waco Reference No: LGL 19-114 (WQA 63693)

Dear Samuel Sinyangwe:

The City of Waco is in receipt of your request for records. The City of Waco takes the position that some of the information requested is exempt from public disclosure. Therefore, as required by the Public Information Act (TEX. GOV'T. CODE, § 552.301), the City is requesting a decision from the Texas Attorney General's Office on whether the records not sent to you may be withheld. A copy of the City's letter to the Attorney General is attached.

The Attorney General's Office will determine in a written response to you and to the City whether all or part of the withheld information must be released to you. If the Attorney General decides that such information must be released, the City will then either release the records or pursue other options available through the Public Information Act. You will be notified if the City decides not to release the information after the Attorney General issues its opinion.

Regarding the information that is not exempt from public disclosure, you may log into the Public Information Center at [www.waco-texas.com/open-records-request.asp](http://www.waco-texas.com/open-records-request.asp) to view all documents responsive to your request.

If you have any questions, please feel free to contact our office

Sincerely,

Megan Rathel  
Assistant City Attorney

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City Attorney

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August 5, 2019

Hon. Ken Paxton  
Texas Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: Public Information Request received July 15, 2019  
Requestor: **SAMUEL SINYANGWE**  
City of Waco Reference #: **LGL 19-114**  
**Attorney General Opinion requested on July 29, 2019**

Dear Attorney General:

The City of Waco, Texas has received a public information request from the above referenced requestor [EXHIBIT 1]. The City of Waco's response letter is attached as EXHIBIT 2. The City of Waco contends that all or part of the information requested is excepted from public disclosure pursuant to the herein recited section or sections of the Government Code and other cited law. Because the City asserts that the information requested is excepted from disclosure under said law, the City is submitting this request for a decision.

I.

The City has released some of the requested information. However, it is the City's position that some of the information is exempt from disclosure and has not been released.

II.

Requestor has requested information regarding "...a copy of all complaints reported by civilians against police between 2013-2019..." [EXHIBIT 3, a representative sample]. It is the City's position that the requested information is excepted from disclosure under the following law:

**Gov't Code, Section 552.101. Exception: Confidential Information**

**Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.**

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code§

552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information must be withheld from the public under common-law privacy when (1) it is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. See *id.* at 685; see also Open Records Decision No. 611 at 1 (1992). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. The Attorney General's office has also found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses; see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (types of prescription drugs, illnesses, operations, and physical handicaps).

Additionally, section 552.101 encompasses confidentiality provisions such as Family Code section 58.008(b). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.008(b). The relevant language of that statute reads as follows:

(b) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public...

Family Code section 51.02(2) (A) defines "child" as a person who is ten years of age or older and under seventeen years of age. Fam. Code § 51.03(a)(3) (defines conduct indicating a need for supervision" to include "a child who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age"). Some of the complaints requested involve juvenile suspects found to have engaged in delinquent conduct or conduct indicating a need for supervision. Based on the above none of the information requested [EXHIBIT 4, a representative sample] may be disclosed and has been withheld in its entirety.

Additionally, the City has withheld public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy pursuant to the previous determination granted by your office on June 26, 2018 in Open Records Letter No. 2018-15072. The City has also redacted information in accordance with 552.137 (email addresses).

### III.

In order to comply with Section 552.301(e) Gov't Code, the City of Waco is submitting a copy of information which pertains to the specific information requested and is labeling that copy by HIGHLIGHTING to indicate which exceptions apply to which parts of the copy. That is, the HIGHLIGHTED PORTIONS INDICATE INFORMATION WHICH SHOULD BE EXCEPTED FROM DISCLOSURE UNDER THE STATUTORY EXCEPTIONS STATED IN

THIS REPLY TO THE ATTORNEY GENERAL.

Thank you for your consideration of this matter. If you should require more information, please do not hesitate to contact me.

Respectfully submitted,



Megan Rathel  
Assistant City Attorney

Enclosures